

# Redfern Legal Centre

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Department of Family and Community Services  
Women NSW  
Locked Bag 4001  
ASHFIELD BC  
NSW 1800

18 June 2015

Attention: Ms Gabrielle Upton MP and Ms Pru Goward MP

Please find attached our policy submission: NSW Domestic Violence Disclosure Scheme in response to the provided discussion paper.

We would welcome the opportunity to meet with you to further to discuss our submission.

Yours faithfully,

Redfern Legal Centre

Sydney WDV CAS

Joanna Shulman  
Chief Executive Officer

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SUBMISSION:

NSW Domestic Violence Disclosure Scheme

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## **1. Introduction: Redfern Legal Centre & Sydney WDVCS**

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

RLC manages the Sydney Women's Domestic Violence Court Advocacy Service (Sydney WDVCS). The aim of the Sydney WDVCS is to assist women and children experiencing domestic violence to obtain protective orders and to assist them with their other legal and social needs, including providing family law and financial advice, referrals to housing and counselling, and other support. We have a particular interest in ensuring that vulnerable women such as Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, women in same-sex relationships, transgender women, and women in regional and remote areas have equal and appropriate access to legal and other domestic violence support and assistance.

## **2. RLC's work in the Area of Domestic Violence**

RLC & Sydney WDVCS are well placed to comment on and make recommendations on the implementation of a Domestic Violence Disclosure Scheme in NSW as a result of their broad experience with client experiencing domestic and family violence. Sydney WDVCS provides legal advice and assistance to approximately 1,700 women per year. The Sydney WDVCS is funded by Legal Aid through the Women's Domestic Violence Court Advocacy Program (WDVCSAP), which was established in 1996 and operates at 108 New South Wales Local Courts. The Sydney WDVCS operates at the Downing Centre (central Sydney), Balmain, Newtown and Waverly local courts.

## **3. The Submission in Summary**

RLC and Sydney WDVCS welcome the opportunity to comment on the implementation of a Domestic Violence Disclosure Scheme in NSW. We support the introduction of the Domestic Violence Disclosure Scheme as it represents an additional opportunity through which to provide support to victims of family and domestic violence. We therefore advocate the implementation of this scheme through pre-existing expert domestic violence services.

The majority of this submission focuses on a proposed process for a Right to Ask Scheme.<sup>1</sup> For the sake of clarity, a summary of this process is reproduced here in full.

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<sup>1</sup> Comments on the development of a Right to Know are found on page 7 under item 4.2

## a) Overview of Application, Approval and Disclosure Process

Step 1: Applicant makes application online or through support services. All applications are referred to the Local Coordination Point (LCP).

Step 2: LCP makes contact with each applicant, conducts a Domestic Violence Safety Assessment Tool (DVSAT), makes any warm referrals to specialist domestic violence services requested by the applicant, and completes application paper work for submission to NSW Police.

Step 3: Upon receipt of the paper work from the LCP, the DVLO conducts searches relating to the application and compiles documentation relating to any domestic violence convictions, prior or current ADVOs, prior ADVO applications and prior DV-related charges. The DVLO will send this documentation to the SAM Coordinator prior to the meeting for circulation to the SAM members for consideration.

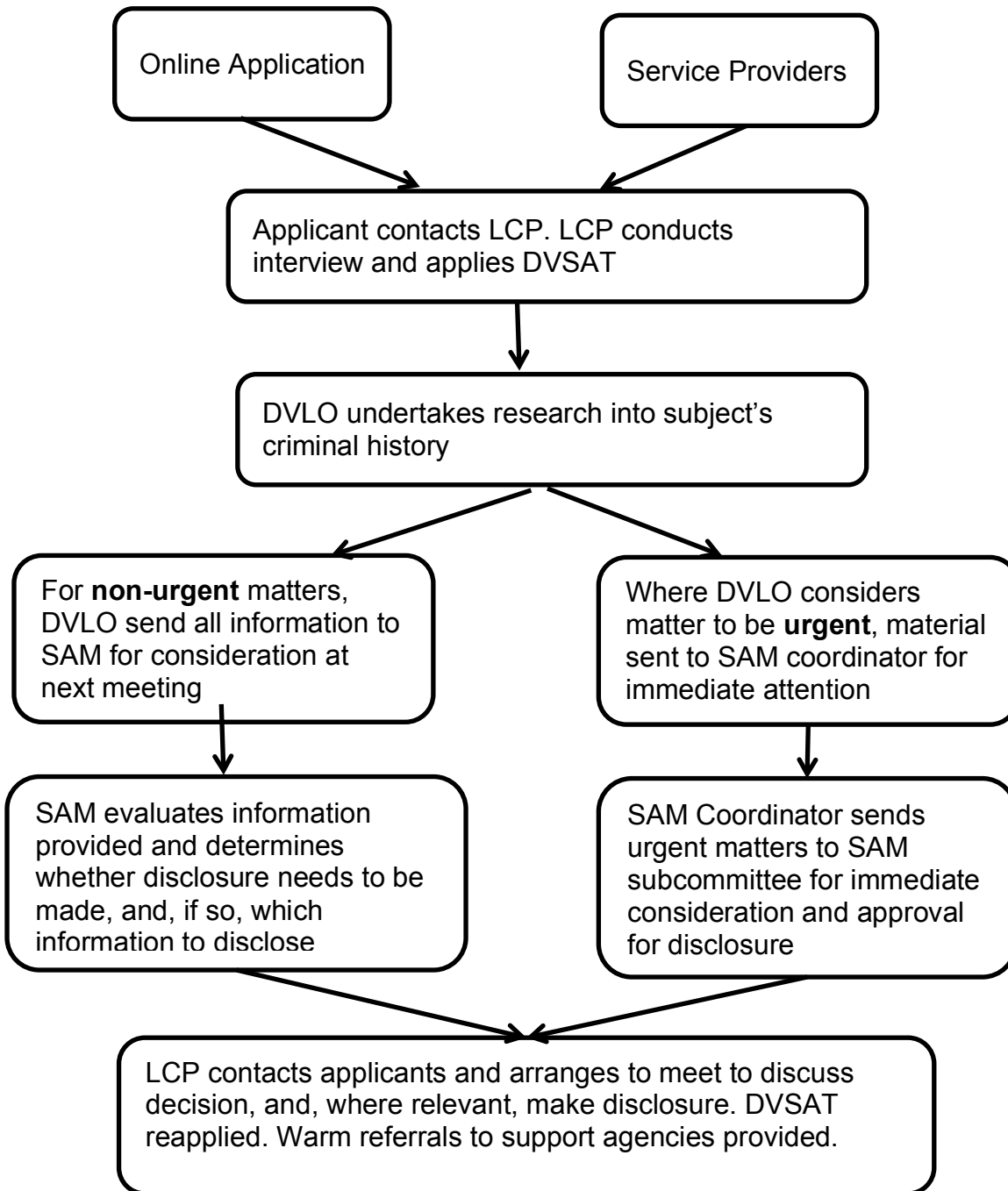
Step 5: SAM discusses each application for disclosure and makes a decision regarding whether, on the information provided by the DVLO, disclosure needs to be made and, if so, the extent of information to be disclosed. SAM will also consider other factors such as mental health concerns regarding the disclosure itself.

Step 6: LCP offers a face-to-face appointment with each applicant to deliver the disclosure information, whether that be that there is nothing to disclose, that there is information but it is not appropriate to disclose or whether there is relevant and appropriate information for disclosure. It is essential that the LCP again conducts a DVSAT with the applicant and offers a range of warm referrals to support services for domestic violence.

Step 7: As with all “serious threat” domestic violence victims, the LCP conducts a one-month follow up call to see if the applicant requires further assistance and to check whether they have engaged with the support services they required.

A work flow diagram outlining this process is included on the following page.

b) Workflow Process



## 5. Responses to Specific Issues

### 4.1 Right to Ask

We support the introduction of a Right to Ask in NSW. However, the Right to Ask should be limited only to those in a **current intimate relationship** with the subject of the application.<sup>2</sup>

We do not support a third party being able to apply under a right to ask. While recognising that family, friends and/or carers may be justifiably concerned about individuals in potentially abusive relationships, allowing third parties a right to ask is not an effective remedy to this concern. Conversely, it is possible that becoming aware of a third party application may cause the primary person to react negatively and isolate himself or herself from others, heightening their vulnerability. Rather, our recommendation would be that concerned third parties be encouraged to support and assist the primary person to make applications on their own behalf. This not only ensures that applicants maintain strong connections with support networks, but also empowers victims or potential victims of domestic violence to have control over their situation.

### 4.2. Right to Know

We support the Right to Know in NSW in cases where victims have been assessed at “serious threat” in accordance with the existing “It Stops Here: Safer Pathway” framework. This decision would be made by the Safety Action Meeting (SAM) on an individual case-by-case basis.

Incorporating a Right to Know into the DVDS also addresses concerns which may be raised where a Right to Ask is not made available to third parties. The Right to Know ensures there remains an alternative method through which a vulnerable individual may be made aware of potential risk, even where they themselves do not seek out this information.

### 5.1 Threshold for Disclosure

We believe that anyone should be able to make an application, by either applying online, or making an application in person at a police station or through a support service.

We support **Option 3** involving a two-step process, as outlined in the process above. The existence of domestic violence-related criminal convictions, charges, prior and current ADVOs and ADVO applications would trigger the matter being placed for discussion on the SAM.

The SAM - a panel of local domestic violence specialists - could consider the application in the context of the information available and make the decision as to whether to disclose on

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<sup>2</sup> ‘Current Intimate Relationship’ may be defined as per the terms of s5(a)-(c), *Crimes (Domestic and Personal Violence) Act 2007*, excluding former relationships.

a case-by-case basis.

Furthermore, utilising the already existing structures of the SAMs, rather than creating additional decision-making bodies, will ensure that as the DVDS expands across NSW women will receive a consistent service and can receive holistic consideration of their matters.

Determining the threshold for disclosure may need to be considered on an individual case basis by the SAM. The core business of the SAM is weighing up the contextual factors in a holistic picture of family and domestic violence and the SAM is best placed to make decisions about whether to disclose and what level of information should be disclosed.

## **5.2 Spent Convictions**

We propose a presumption against the disclosure of spent convictions. However, details of spent convictions should be made available to the SAM, and the SAM may decide to disclose these where exceptional circumstances allow.

## **5.3 Age limit for subject and applicant**

### *Age of Applicants*

We support a restriction of the scheme to applicants 16 years and over.

### *Juvenile Convictions*

We do not support the disclosure of any juvenile convictions or AVDOs of the subject which occurred prior to the age of 16. Where a subject has had juvenile convictions or ADVOs recorded between the ages of 16-18 years, we support disclosure only where a DVDS application is made within five years of the conviction/ADVO.

## **5.4 What information should be disclosed?**

We support **Option 1**, the disclosure of an individual's domestic violence related criminal history only (including sexual offences). This restriction ensures the right to privacy of the subject is preserved to the extent possible. We suggest that upon application NSW Police Force will search for information relating to prior domestic violence related convictions, prior and current ADVOs, prior applications for ADVOs and prior charges. Decisions would then be made at the SAM about which of these pieces of information is relevant for disclosure (if any) in the context of the application.

The extent to which contextual information is disclosed should be at the discretion of the SAM, with a presumption against the disclosure of contextual information. Contextual information should only be disclosed where there is a risk of serious domestic violence, and the disclosure of contextual information is necessary to adequately communicate this risk to the applicant. This may include situations where the nature of previous abuse is relevant to applicant's circumstance. It is paramount that, where contextual information is disclosed, every precaution is taken to avoid the identification of previous victims and their circumstances.



## 6. Application Process – Right to Ask

We support using existing domestic violence structures, specifically the Local Coordination Points (LCPs) and Safety Action Meetings (SAMs), to implement the DVDS. These services already have experience in working with victims or potential victims of domestic violence, and this will allow potential victims across NSW to receive a consistent response to their domestic violence concerns, rather than receiving a disparate and inconsistent response from a range of service providers. It is essential that at the point of application a risk assessment tool is applied (we support the use of the DVSA, in order to promote consistency with the existing Safer Pathway reforms) and that warm referrals to appropriate domestic violence support services are offered to the application. This is the core business of the LCP and therefore making the LCP the recipient of applications will create a uniform and consistent response for applicants.

This will require the continued and accelerated rolling out of LCPs across NSW and the allocation of additional resources to these services in order to ensure that they are adequately equipped to manage the increased demand the DVDS will create.

Our proposed application process would see the applicant being able to apply online, through a support service, or by directly contacting the LCP.

We propose that the LCP would have responsibility for conducting phone interviews with the applicant regarding the application (using a DVDS Checklist as a guide). At the time, the LCP would also conduct a DVSA with the applicant, make any warm referrals to specialist domestic violence services requested by the applicant and then submit the application to NSW Police (to the DVLO).

The DVLO (or another NSW Police Force representative) would then be responsible for conducting the searches and providing all information to the SAMs for consideration.

Please note, the current LCPs are hosted by the Women's Domestic Violence and Court Advocacy Scheme (WDVCAS) and, as such, would only be available to female applicants. We note that, in the UK scheme, 98% of applications were made by, or on behalf of, women,<sup>3</sup> and we anticipate similar statistics in NSW. However, there would still need to be implemented an alternative system in place for any male applicants who wished to access the scheme. This could work in concert with existing services and pathways set up for male victims under Safer Pathways.

## 8. Approval Process

As discussed, we support proposed **Option 2**, the determination of disclosure by a local decision making body, namely, the SAMs. Following the receipt of information from the DVLO, the SAM will discuss each application for disclosure. They will have responsibility for determining:

- a) Whether the information is relevant and appropriate for disclosure

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<sup>3</sup> Home Office, 'Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment', 11

- b) How much detail is appropriate and necessary to disclose
- c) Whether any additional supports or considerations need to be taken into account when disclosing this information, such as mental health concerns.

In situations where the DVLO considers the matter to be one of extreme urgency, this can be communicated to the SAM coordinator. The coordinator will circulate the information to a subcommittee of the SAM for immediate consideration, requiring only email approval from this subcommittee for disclosure. This ensures these matters are resolved in a timely way, but still go through a process of consideration.

Recognising that the vast majority of areas across NSW do not yet have LCPs or SAMs in place, we advocate their accelerated roll out across NSW. This will ensure consistent state-wide implementation of the DVDS and the utilisation of existing procedures. We recommend that the DVDS be implemented only in areas in which Safer Pathway is currently operational and that no temporary or ad hoc decision making bodies be formed. It is essential that this system utilises the existing domestic violence expertise available at the SAMs.

### **9.1 Disclosure to the applicant/ person identified**

We support LCPs being the primary contact point for applicants under the DVDS and, as such, advocate the LCP should provide the disclosure. Firstly, this allows the entire system to remain uniform across the state, with the LCPs already providing significant support to victims of family and domestic violence. Placing responsibility for disclosure with the LCPs will limit the number of agencies or individuals whom vulnerable persons are required to interact with. One of the key aims of Safer Pathways has been reducing the number of different services that victims and potential victims are required to tell their story to.

Secondly, LCPs have significant expertise in working with victims of domestic violence at various stages of their experience, providing warm referrals to counselling services, legal assistance services and other agencies, which may be required by victims of family and domestic violence. It is likely that, in a number of circumstances, the details of the disclosure will cause significant distress to applicants. Providing adequate responses and referrals in these situations falls within the expertise and regular work of the LCPs. Additionally specific scripting and language choice will be important when disclosing or indeed in conveying a decision not to disclose, or that there was no information to disclose. For this reason it is essential that LCPs make disclosures to applicants as if it were to be decided on a case-by-case basis, the agencies selected to make disclosure would not be practiced in the nuances of communicating this type of information and what it could mean for applicants.

Finally, having the LCP as responsible for the disclosure of information, rather than the DVLO, ensures vulnerable individuals are not required to interact with members of the NSWPF. Many victims of domestic violence, especially Indigenous applicants, may be reluctant to directly involve or interact with members of the police force, either as a result of previous negative experiences or fear of recrimination. Removing the responsibility of disclosure from DVLOs under the auspices of NSWPF would remove a significant potential obstacle preventing vulnerable individuals from accessing the scheme.

We further recommend that the LCP would be resourced to provide face-to-face appointments with applicants in order to deliver the results of the application. It is important that a face-to-face appointment takes place, whether there is information to disclose or not. In the case where there is a decision by the SAM not to disclose or in the case that there is no information to disclose it is important that the applicant is aware that this does not necessarily mean that there is no risk. It is essential that an experienced domestic violence worker conduct this conversation with applicants face-to-face to communicate the context of the information (or lack of) and allow the applicant to debrief about what they may have just learned.

## **9.2 Disclosure to a third party**

We do not support disclosure to a third party under the DVDS, for reasons outlined above under section 4.1. An exception to this may be made where the applicant has elected for a support person to be present for the disclosure meeting. This person would naturally be under the same non-disclosure obligations as the applicant.

## **9.3 Informing the subject of the disclosure**

Under no circumstances should the subject be informed either of an application or disclosure. Disclosure to the subject at any time during or after the application process could substantially increase the risk to the applicant or potential victim, and may also increase the risk of harm for former victims.

## **9.4 No disclosure to the applicant**

Where a decision is made not to disclose information, or where there is no information to disclose, the applicant should be informed of this in person by the LCP, as outlined above under 9.1. Explaining the implications of non-disclosure so as to ensure an applicant is not left with a false sense of security requires significant nuance, and is therefore best done in person. Additionally, the SAM may deem it necessary to request additional support persons to attend this meeting in order to provide advice and counselling.

The decision to disclose information is an administrative one, and therefore should be open to review in order to ensure procedural fairness. Applications for a review of the decision should be made to the NSW Ombudsman, due to his pre-existing jurisdiction over decisions of relevant government bodies and subcontractors.

## **10.1 Risk assessment for applicant**

Where an individual contacts the LCP to begin an application, the DVSAT should be applied at this time, and the LCP Intake and Referral Officer should make warm referrals to specialist services.

## **10.2 False information or misuse of information**

We support asking the applicant, and any support parties who attend the disclosure

meeting, to sign an undertaking not to disseminate information. Furthermore, we support only oral disclosure in order to limit the risk of any documents or information being widely disseminated. Records of disclosure should be kept in the same manner as the SAM record keeping as it is of a similar level of confidentiality and sensitivity.

Further consideration must go into safeguards to ensure that this system does not inadvertently further victimise women who are the primary victim of domestic violence against whom vexatious ADVOs have been taken out or who have been charged with crimes that have taken place out of self-defence against years of abusive perpetrated against them.

## **12. Pilot Locations**

We recommend that the DVDS is only piloted in Local Area Commands where there is a well established Local Coordination Point and SAM mechanism in place. It would therefore be logical that it be piloted in Waverley and Orange.

## **14. Further Questions**

We take this opportunity to reemphasise that the implementation of a DVDS in NSW will not be effective, and indeed, could have a negative impact, if sufficient additional resources are not allocated to the state-wide rollout of Safer Pathways with adequate resourcing to the WDVCS to host the LCPs, SAMs and DVLOs. We further urge the NSW Government to invest in women's specific domestic violence services to which the LCPs can make safe and appropriate referrals.

A conservative estimation of the costs associated with the UK DVDS found the average application cost £740.<sup>4</sup> The already financially limited services that would have responsibility for this scheme in NSW will not be able to accommodate the additional demand this scheme will create without a significant increase in funding. Our recommendations will require extra funding to the LCPs, but would still be far more cost effective than developing new infrastructure to provide the DVDS.

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<sup>4</sup> Home Office, 'Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment', 4